IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 26138 of 2003

Between:

Selemp Pharma Enterprises Dr.No.23-10-3, Purushotham street, Satyanarayanapuram, Vijayawada Kirshna District

Rep. By its proprietor Sri Sanka Srinivasa Rao, S/o.Thandava Krishna Murthy.

..... PETITIONER

AND

1 The Secretary, Law Department, Govt. of A.P., Secretariat Buildings, Saifabad, Hyderabad
2 The Principal Secretary to Revenue, Govt. of A.P. Secretariat Buildings, Saiabad, Hyderabad
3 The Commercial Tax Officer, Gudivada, Krishna District
4 The Deputy Commissioner of Commercial Taxes, No.1 Division, Vijayawada, Krishna District
5 The Commercial Tax officer (FCA) Park Road Circle, Vijayawada, Krishna District

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of Mandamus declaring the provisions contained in section -32 of A.P. General sales Tax Act, 1957 as inapplicable in relation to the offences identified u/s.-

30(1)(c) and section - 30(3) and (b) of the APGST Act, 1957 as the said provision of the Act is ultravires of Section-30 in as much as the exercise of the powers in Section-32 for offences identified u/s.-30 will be in usurpation of jurisdiction conferred on a court of first class Magistrate and therefore Section-32 is redundant or alternately to read down it's application in respect of offences other than those that are enumerated in section-30 and consequently set aside the proceedings of the 3rd respondent herein O.R.No.5/03-04 dated 11-11-2003 as illegal, arbitrary without jurisdiction and without authority of law as also in violation of the principles of natural justice, apart from being in contravention of the judgments of this Hon'ble court in 26 APSTJ Pg.91 and 22 APSTJ Pg.135 direct refund of user charges collected pursuant to the proceedings.

Counsel for the Petitioner: MR.M.V.J.K.KUMAR

Counsel for the Respondents: SRI K. RAJI REDDY, SPECIAL STANDING COUNSEL FOR COMMERCIAL TAX

The Court made the following:

THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE SRIJUSTICE C.V. RAMULU

WRIT PETITION No.26138 of 2003

ORDER: (Per BRSR,J)

Concededly, the subject matter that arises for consideration in this writ petition is squarely covered by the judgment rendered by this Court in ***AMBICA***

LAMP HOUSE, RAJAHMUNDRY v . ***COMMERCIAL TAX OFFICER (INT)-I ENFORCEMENT, HYDERABAD***.

Following the said decision, this writ petition is also disposed of in terms of the said judgment.

However, it is made clear that the evidence or material, if any, gathered by the Commercial Tax Department during the course of investigation, can always be utilized for proceeding further in the matter in accordance with the provisions of the A.P. General Sales Tax Act and the Rules framed thereunder.

_____

B. SUDERSHAN REDDY, J.

Date: 27/04/2005

_____

C.V. RAMULU, J.

GS/GRR

To

1 The Secretary, Law Department, Govt. of A.P., Secretariat Buildings, Saifabad, Hyderabad

2 The Principal Secretary to Revenue, Govt. of A.P. Secretariat Buildings, Saiabad, Hyderabad

3 The Commercial Tax Officer, Gudivada, Krishna District

4 The Deputy Commissioner of Commercial Taxes, No.1 Division, Vijayawada, Krishna District

5 The Commercial Tax officer (FCA) Park Road Circle, Vijayawada, Krishna District

6 Two CD Copies.